TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 949.

THE WIGGINS FERRY COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF EAST ST. LOUIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED OCTOBER 8, 1898.

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VS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Wiggins Ferry Company, plaintiff in error, and The City of East St. Louis, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said plaintiff in error as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States, should be done.

2

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-third day of October, in the year of our Lord one thousand eight hundred and eighty-two and of our Independence the one hundredth & seventh.

[SEAL.] JNO. A. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—

JOHN M. SCOTT,
Chief Justice of the Supreme Court of Illinois.

(Indorsed:) Supreme Court U. S. 1882, October term No. 949. The Wiggins Ferry Company, pl'ff in error, vs. The City of East St. Louis. Writ of error. Filed 28th Oct'r, 1882. Office Supreme Court U. S. Filed Oct. 28, 1882. James H. McKenney, clerk.

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3 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a supreme court of the State of Illinois, begun and held at Mount Vernon, on Tuesday, the 3rd day of May, in the year of our Lord one thousand eight hundred and eighty-one, within and for the southern grand division of said State.

Present, Hon. Pinkney H. Walker, acting chief justice.
" Hon. John M. Scott, associate justice.
" Hon. Benj. R. Sheldon, associate "
" Hon. John Scholfield, associate "
" Hon. Alfred M. Craig, associate "
" Hon. John H. Mulkey, associate "
" Hon. James McCartney, att'y-gen'l, "
Geo. W. Yost, sheriff.

J. O. CHANCE, *Clerk.*

THE WIGGINS FERRY COMPANY, PLAINTIFF IN error,
vs.
THE CITY OF EAST ST. LOUIS, DEFENDANT IN error.
} 21. Error to appellate court fourth district.

Be it remembered that heretofore, to wit, on the 26th day of April, A. D. 1881, the above-named plaintiff in error filed in the office of the clerk of the supreme court of the southern grand division of Illinois a certain transcript of the record of proceedings had in the above-entitled cause in the appellate court of the fourth district of the State of Illinois, and also a certain transcript of the record of proceedings had in said cause in the city court of the city of East St. Louis, which last-named transcript, together with errors assigned & certificate of authentication, is in words and figures following, to wit:

4 STATE OF ILLINOIS,
County of St. Clair, City of East St. Louis, ss:

At a regular term of the city court of East St. Louis, begun and held at the city hall, in and for said city, on the third day of January, A. D. 1881, in pursuance of law, by the Hon. Charles T. Ware, judge of said court, the following proceedings were had, to wit:

Present, Hon. Charles T. Ware, judge; Fred. Ropiquet, sheriff; R. A. D. Holder, State attorney; Thomas Hanifan, clerk.

Be it remembered that the following is the copy of the summons filed in this cause as follows, to wit:

Debt summons.

STATE OF ILLINOIS,
St. Clair County, city of East St. Louis, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

5 We command you to summon The Wiggins Ferry Company, if

it can be found in said city, to be and appear in the city court of East St. Louis, on the first day of the next term thereof, to be holden at the city hall, in said city, on the first Monday of January next, then and there to answer unto The City of East St. Louis of a plea that it render unto it the sum of ten thousand dollars which it owes to it and unjustly detain from it to its damage, as it says, of the sum of ten thousand dollars, and not fail under penalty of what the law directs. And this writ you shall have at our said court, with your return endorsed thereon.

[L. S.] Witness Thomas Hanifan, clerk of said court, and the seal thereof affixed this 17th day of December, A. D. one thousand eight hundred and eighty.

Copy of officer's return.

I have duly served the within writ by reading and delivering a true copy of the same to S. C. Club, the president of the within-named Wiggins Ferry Company, this Dec. 18th, 1880.

FRED. ROPIEQUET,
Sheriff.

6 By D. D. ANTHONY, *D'p'ty.*

Filed December 31st, 1881. Thomas Hanifan, clerk.

Be it also remembered that the following is a true copy of the declaration as follows, to wit:

In the city court of East St. Louis, St. Clair County, Illinois. January term, 1881.

The City of East St. Louis, plaintiff, complains of The Wiggins Ferry Company in an action of debt. For that whereas on the 1st day of January, 1875, and from thence hitherto, the ordinance of said city required all persons or corporations using ferry-boats within the jurisdiction of said city to take out a license for the same at the rate of one hundred dollars for each boat for one year, and the defendant during all that time had and was using divers ferry-boats within said city, to wit, ten ferry-boats, upon which it was bound to take out such licenses, but the defendant did
7 not take out such license for its said ferry-boats nor pay the money required by said ordinance for such license, which now amounts to a large sum, to wit, ten thousand dollars, whereby an action hath accrued to the plaintiff by force of the statute and charter of said city and its said ordinance to demand and recover from the defendant the said sum of money. And for that whereas also the defendant, at the city of East St. Louis, on the 15th day of December, 1880, was indebted to the plaintiff in the sum of ten thousand dollars for the license of certain ferry-boats which had before that time become due from the defendant to the plaintiff by reason of the defendant having failed to procure and pay for such license, as required by the charter and ordinance of said city, which sum of money the defendant should have paid for such licenses when requested, yet the defendant has not paid the said several sums of money in the said counts mentioned, or any part thereof, but refuses so

to do, to the damage of the plaintiff of ten thousand dollars, and therefore it brings this suit.

By M. MILLARD, *Att'y.*

8 *Account sued on.*

Defendant Dr. to paintiff for money due for license of ferry-boats..... $10,000 00

Filed December 17th, 1880, Thomas Hanifan, clerk.

Be it remembered that the following is a copy of general issue filed in this cause, to wit:

STATE OF ILLINOIS,
City of East St. Louis:

In city court, January term, 1881.

THE CITY OF EAST ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY. } Debt.

And now comes the defendant and says that it is not indebted to the plaintiff in the manner and form as the said plaintiff hath above thereof complained against it, and of this the defendant puts itself upon the country.

H. P. BUXTON,
Att'y for Defendant.

9 Filed January 6th, 1881. Thomas Hanifan, clerk.

Be it also remembered that the following is a copy of the order of court in this cause, to wit:

THE CITY OF EAST ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY. } Debt.

And now on the fourth Tuesday of the term, it being the 25th day of January, 1881, come the parties, by their respective attorneys, Millard for plaintiff and Buxton for defendant, and issue being joined, this cause is tried by the court without a jury, upon an agreed state of facts, and the court, after hearing the evidence and arguments of counsel, and being fully advised and concerning the premises, finds for the plaintiff, and assess' its debt at sixteen hundred dollars, and thereupon the defendant moves the court for a new trial of this cause, which is by the court overruled. It is therefore considered and adjudged by the court that the plaintiff recover of the said defendant the said sum of sixteen hundred dollars, debt as aforesaid, together with the costs by it in this behalf expended, and
10 that it have execution therefor, to which defendant excepts and prays an appeal to the appellate court, 4 district of the State, which is allowed upon its filing a bond in the penal sum of two thousand dollars

conditional according to law, security to be approved by the clerk of this court, bond and bill of exceptions to be filed in forty days.

Be it also remembered that the following is a copy of the bill of exceptions filed in this cause.

THE CITY OF EAST ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY. } Debt.

Be it remembered that on the trial of this cause, which was submitted to the court by agreement, the following agreement was introduced in evidence, to wit:

STATE OF ILLINOIS,
City of East St. Louis:

In city court. January term, 1881.

THE CITY OF EAST ST. LOUIS
vs.
THE WIGGINS FERRY COMPANY. } Debt.

This case is submitted to the court upon the following agreed statement of facts:

11 That under and by authority of an act of the legislature of this State, entitled "An act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi," approved March 2d, 1819, and amendatory acts, the said Wiggins and his associates did establish, maintain, and operate a ferry upon and over the Mississippi River, between the city of St. Louis, in the State of Missouri, and the Illinois shore of said river opposite to the said city of St. Louis, now within the limits of the city of East St. Louis, from about the time of the passage of said act of 1819, until the organization of The Wiggins Ferry Company, defendant, in the year 1853, under and by authority of an act of said legislature, entitled "An act to incorporate The Wiggins Ferry Company," approved February 11th, 1853; that in the year 1853, under authority of said act of 1853, the successors, heirs, and assigns of said Samuel Wiggins, the then owners of said ferry and ferry franchise, and of all the rights, privileges, and immunities granted to said Samuel Wiggins and his successors, heirs, and assigns, as aforesaid, by proper deeds and assignments conveyed the same to defendant, they having become the stockholders of said ferry company, and from thence hitherto

12 defendant hath remained the lawful owner of said ferry, ferry franchise, rights, privileges, and immunities aforesaid, and including the ferry-boats, wharf-boats, wharfs, and landings in use by said ferry, and also the rights, privileges, immunities, and franchises granted by said act of 1853 and amendatory acts, and that under and by authority of all said grants, franchises, rights, privileges, and immunities defendant has maintained and operated said ferry from thence hitherto; that the Mississippi River at the point between the States of Illinois and Missouri, upon and over which the said ferry is established and operated, under the laws of the United States and the rules and regulations established thereunder, by the duly authorized officers of the United States, has been declared to be,

and is, a navigable river within the purview of such laws; and under said laws, rules, and regulations, and especially in conformity to the Revised Statutes of the United States, title L, "Regulation of vessels in domestic commerce," the defendant for the last twenty years and more has been required to, and has, all its ferry-boats, all of which are more than twenty-tons
13 burthen, regularly enrolled and annually inspected and licensed, at an annual cost of from seventy-five dollars to one hundred dollars per boat, according to ton'age and number of men employed on each, including hospital dues and other fees and charges under said laws and regulations. The defendant ever since its organization has paid to the county of St. Clair, as and for a ferry license, the sum of $300.00 per annum, under the laws of Illinois and the requirements of the county authorities; that defendant ever since its organization has owned the wharfs and landing used by said ferry in said city of East St. Louis, which is graded and paved at its own expense, and that it has never used or employed any wharf or landing belonging to said city of East St. Louis; that defendant ever since its organization has annually listed for taxation and paid all taxes legally assessed upon all its property, all its personal property, including its boats and franchise, and all its real estate which is situated within the city limits, and including its wharfs and landings, having been taxed by said city of East St. Louis ever since the organization of said city; that the following ferry companies own and operate ferries over and across the Mississippi River between the said city of St. Louis and
14 the Illinois shore, but without the limits of the city of East St. Louis, both in active competition with the ferry of defendant, neither of which are or ever have been required to pay any sum whatever for license to either the city of East St. Louis or any other municipal corporation except the county of St. Clair, to which they pay license as follows, that is to say:

Illinois and St. Louis Ferry Co., $ per annum.
St. Louis and Cahokia Ferry Co., $ per annum.

That the St. Louis Bridge Co., which owns and operates a bridge over the Mississippi River between said cities of St. Louis and East St. Louis, which has been in active competition with defendant ever since said bridge was opened for use in July, 1874, is required to pay no license fee whatever to the city of East St. Louis; that June 1, 1868, the city council of the city of East St. Louis duly passed and published "Ordinance No. 70," parts of which are as follows:

SEC. 1. No person, firm, company, or corporation shall be engaged in, prosecute, or carry on any trade, business, calling, or profession hereinafter mentioned without first having obtained a license therefor.

* * * * * * *

15 SEC. 10. Keepers of ferries shall pay fifty dollars license for each boat plying between this city and the opposite bank of the river for one year, or twenty-five dollars for each boat for six months.

That in compliance with the above ordinance defendant paid said city a license fee of $50.00 per annum on each of its ferry-boats, its last license thereunder being from May 1st, 1874, to May 1st, 1875.

That August 6, 1874, said city council repealed said ordinance No. 70, and enacted ordinance No. 239 in its place, to the same tenor and effect, except that it required $150.00 license fee per annum for each boat. That

Nov. 30, 1877, said city council passed ordinance No. 307, the third section of which is as follows: Sec. 3. No license for any purpose whatever shall be required, exacted, or collected for or on account of the city, and all ordinances and resolutions in relation to licenses are hereby repealed.

That October 7th, 1878, said city council passed ordinance No. 317, which is substantially the same as ordinance No. 70, except that it fixes the license fee at $100.00 per annum for each boat. That on May 1, 1875,

16 and from thence hitherto, the defendant, in the operation of its said ferry between said cities of St. Louis and East St. Louis, has employed eight ferry-boats (including two tugs and one transfer boat), and since said May 1, 1875, has not taken out any license nor paid any license fee to said city of East St. Louis. Upon the facts here stated, and the laws applicable thereto, the court shall determine the right of plaintiff to demand and the liability of defendant to pay the license fee, fixed by said ordinance, or either of them, and render judgment accordingly, and this without regard to the pleadings in the case. That the acts of the legislature, and the laws, rules, and regulations of the United States, and the enrolments, inspections, and licenses herein mentioned or referred to, and the charter and ordinances of said city of East St. Louis, or copies thereof, may be used and referred to as a part of the record in this case, without proof or authentication, and without being copied into the record in this case, either in this court or any other court to which this case may be taken.

M. MILLARD,
J. M. FREELS,
B. H. CAMBY,
Att'ys for Plaintiffs.

17 H. P. BUXTON,
Att'y for Defendant.

Filed January 21st, 1881. Thomas Hanifan, clerk.

This was all the evidence in the case. Upon this agreed statement of facts the court found the issues for the plaintiff, and assessed the plaintiff's damages at the sum of sixteen hundred dollars, to which finding of the court and assessment of damages the defendant, at the time, by its counsel, excepted, and the court overruled the exceptions. Whereupon the defendant moved the court for a new trial of this cause, in writing, and duly filed:

1st. Because the finding of the court is contrary to law; and

2d. Contrary to the evidence; which motion was overruled by the court, to which ruling of the court the defendant, at the time, by its counsel, excepted; whereupon the defendant moved the court to arrest the judgment in this cause, which motion the court refused, to which ruling of the court in refusing to arrest the judgment herein the defendant, at

18 the time, by its counsel, excepted. And inasmuch as the matters aforesaid do not appear of record, the defendant presents this its bill of exceptions, and asks that the same may be signed and sealed by the court and made a part of the record in the case, which is done this 10th day of February, A. D. 1881.

CHARLES T. WARE, [SEAL.]
Judge of City Court of East St. Louis.

Filed February 12th, 1881. Thomas Hanifan, clerk.

Be it also remembered that the following is a copy of the appeal bond filed in this cause:

Appeal bond from City to appellate court.

Know all men by these presents that we, The Wiggins Ferry Company and John De Haan, of the county of St. Clair and State of Illinois, are held and firmly bound unto The City of East St. Louis in the penal sum of two thousand dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at East St. Louis this 10th day of February, in the year of our Lord one thousand eight hundred and eighty-one.

19 The condition of the above obligation is such that whereas the said City of East St. Louis did, on the 25th day of January, one thousand eight hundred eighty-one, at a term of the city court of East St. Louis, then being holden within and for the city of East St. Louis, in the county of St. Clair and State of Illinois, obtain a judgment against the above-bounded The Wiggins Ferry Company for the sum of one thousand six hundred dollars and cents and costs of suit, from which judgment the said Wiggins Ferry Company has prayed for and obtained an appeal to the appellate court 4th district of this State: Now, if the said Wiggins Ferry Company shall duly prosecute said appeal, and shall, moreover, pay the amount of the said judgment, costs, interest, and damages rendered and to be rendered against it, the said Wiggins Ferry Company, in case the said judgment shall be affirmed in the said appellate court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

WIGGINS FERRY COMPANY, [SEAL.]
By S. C. CLUBB, *Pres't.* [SEAL.]
JOHN DE HAAN. [SEAL.]

Approved by me this 10th day of February, A. D. 1881.
THOMAS HANIFAN, *Clerk.*

20 STATE OF ILLINOIS,
County of St. Clair, City of East St. Louis, ss:

I, Thomas Hanifan, clerk of the city court of East St. Louis, St. Clair County, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of the summons, declaration, general issue, order of court, bill of exceptions, and appeal bond; and I further certify that this is a complete record of this cause in a certain cause lately pending in said court, on the law side thereof, wherein The City of East St. Louis is plaintiff and The Wiggins Ferry Company defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court at East St. Louis this 15th day of February, A. D. 1881.

[SEAL.] THOMAS HANIFAN, *Clerk.*

Errors assigned by appellant.

1. The court erred in finding the issues for appellee.
2. The court erred in rendering judgment for appellee.

3. The court erred in overruling appellant's exceptions and mo-
21 tions for new trial & in arrest of judgment, and each of them.

H. P. BUXTON,
Att'y for Appellant.

STATE OF ILLINOIS, *ss:*

I, John Q. Harman, clerk of the appellate court of the 4th district of said State, hereby certify that this is the original transcript of the record of said cause duly filed in said court on the 23rd day of Feb'y, A. D. 1881.

In witness whereof I hereto set my hand and affix the seal of said appellate court at Mt. Vernon, Ills., this 20th day of April, A. D. 1881.

[SEAL.] J. Q. HARMAN, *Clerk.*

The transcript of record of proceedings had in said cause in the appellate court for the fourth district is in words and figures following, to wit:

22 At an appellate court of the State of Illinois, begun and held at Mount Vernon, on Tuesday, the 22d day of February, in the year of our Lord one thousand eight hundred and eighty-one, within and for the fourth district of said State;

Present, Hon. George W. Wall, presiding justice.
" Hon. David J. Baker, judge.
" Hon. Tho's S. Casey, judge.

JOHN Q. HARMAN, *Clerk.*

THE WIGGINS FERRY COMPANY, APPELLANT, *vs.* THE CITY OF EAST ST. LOUIS, APPELLEE. } Appeal from the city court of East St. Louis.

Be it remembered that heretofore, to wit, on the 23rd day of February, A. D. 1881, there was filed in said court, by said appellant, a certain transcript of the record of proceedings had in said cause in the city court of East St. Louis, which said transcript, duly authenticated, is herewith transmitted to the supreme court of said State in pursuance of law.

And afterwards, to wit, on the 7th day of April, A. D. 1881, the following proceedings were had herein, and duly entered of record, to wit:

23 THE WIGGINS FERRY CO., APPELLANT, *vs.* THE CITY OF EAST ST. LOUIS, APPELLEE. } Appeal from city court of East St. Louis.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective, and that that record is no error; therefore it is considered by the court that the judgment aforesaid be affirmed in all things,

and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellee recover of and from the said appellant costs by it in this behalf expended, and that it have execution therefor.

24 And afterwards, to wit, on the 20th day of April, A. D. 1881, there was filed in the clerk's office of said court a certain writ of error, which said writ reads and is in the words and figures following, to wit:

25 STATE OF ILLINOIS, *ss:*

Supreme Court, southern grand division.

The people of the State of Illinois to the clerk of the appellate court for the 4th district of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the said appellate court, before the judges thereof, between The Wiggins Ferry Company, appellants, and The City of East St. Louis, appellee, it is said manifest error hath intervened to the injury of the aforesaid appellant, as we are informed by its complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to the justices of our supreme court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid, at Mt. Vernon, in the county of Jefferson, on the first Tuesday in May next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, T. LYLE DICKEY, chief justice of the supreme court, and the seal of said court, at Mt. Vernon, this 20th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

[L. S.] J. O. CHANCE,
Clerk of the Supreme Court.

(Indorsed:) Supreme court southern grand division. Wiggins Ferry Co., plaintiff in error, vs. City of East St. Louis, defendant in error. Writ of error. Filed April 20, '81. J. A. Harman, clerk.

26 STATE OF ILLINOIS, *ss:*

I, John Q. Harman, clerk of the appellate court, within and for the fourth district of the State of Illinois, hereby certify that the above and foregoing is a true, perfect, and complete transcript of the record of proceedings had in said court, in said cause, as truly taken and copied by me from the records and files of said court now remaining in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Mt. Vernon, Ill's, this 20th day of April, A. D. 1871.

[L. S.] JOHN Q. HARMAN, *Clerk.*

Whereupon afterwards, to wit, at the May term, A. D. 1881, of said supreme court the following proceedings were had and orders entered of record herein, to wit:

At a supreme court begun and held at Mt. Vernon on Tuesday, the 3d day of May, in the year of our Lord one thousand eight hundred and eighty-one, within and for the southern grand division of the State of Illinois, to wit, on Friday the 6th day of May, A. D. 1881:

Present, Pinkney H. Walker, acting chief justice.
John M. Scott, associate justice.
Benj. R. Sheldon, " "
John Scholfield, " "
John H. Mulkey, " "
Alfred M. Craig, " "
James McCartney, att'y general.
Geo. W. Yost, sheriff.

J. O. CHANCE, *Clerk.*

27 THE WIGGINS FERRY COMPANY, PLAINTIFF in error,
vs.
THE CITY OF EAST ST. LOUIS, DEFENDANT IN error.
No. 21. Error to appellate court, 4th dist.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming now on to be heard, the plaintiff in error having entered motion to reverse the judgment and remand said cause, and for costs, and the defendant in error having entered motion to affirm the judgment herein and for costs and for procedendo, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

28 Afterwards, to wit, on the 29th day of March, A. D. '82, the opinion of the court was filed herein, which is as follows:

Opinion by Mr. Justice Walker.

The general assembly, on the 11th day of February, 1853, adopted an act incorporating The Wiggins Ferry Company, at East St. Louis. The charter conferred various powers, and declared the corporation perpetual. The act authorized the company to exercise all of the powers previously conferred on Samuel Wiggins with others. A number of persons were named as incorporators, the charter was adopted, and the grant accepted, and the company organized, and has ever since exercised its franchises by maintaining and operating ferry boats, as authorized by the charter. The 54th section of article 3 of the charter of East St. Louis, approved the 16th of February, 1865 (vol. 1 Special laws, p. 350), gives the city power "to

license, tax, and regulate ferries," and under this provision the city, on the 1st of June, 1868, adopted an ordinance as follows:

"SECTION 16. Keepers of ferries shall pay $50 license for each boat ferrying between this city and the opposite bank of the river for one year, or $25 for each boat for six months."

The company procured a license, and paid therefor from that time until the 1st of May, 1875; after which date it failed to procure a license, but continued to operate its ferry-boats as before.

29 On the 6th of August, 1874, the city passed an ordinance fixing ferry licenses at $150 per annum on each boat. In November, 1877, it passed an ordinance providing that the city should not, for any purpose, require a license of or collect any fee for any business, and repealed all ordinances requiring licenses. On the 7th day of October, 1878, the city adopted an ordinance similar to the ordinance of the 1st of June, 1868, except it fixed the license fee at $100 for each boat per annum. The company employed eight boats in ferrying persons and property, under their charter, from the 1st of May, 1875, until this suit was brought, without procuring any license from the city for the purpose. It was stipulated that the company paid the county of St. Clair for a license $300 per annum. It was agreed that the acts of the legislature, and laws, rules, and regulations of the United States, and of inspections, the charter and ordinances of the city, or copies thereof, might be used and referred to as part of the record, without proof or authentication; that on the facts and laws the court should determine the right of the city to demand and the liability of the company to pay the license fees fixed by the ordinances,

30 and render judgment accordingly, without reference to the pleadings. The court found and rendered a judgment in favor of the city for $1,600. The record is brought to this court and various errors are assigned for a reversal. It is urged that the recovery cannot be maintained under the power to tax, under the power to regulate, or under the power to license, because this ferry is over a navigable river, and beyond State control; that it is in violation of the constitutional rule of uniformity of taxation, and that it is a tonnage tax, and contrary to the Federal Constitution. We shall consider these objections, and give our views as concisely as the nature of the questions will permit, for a clear understanding of the case. It is not denied that the ordinance was properly passed, was in full force, and the amount of the recovery is correct, if the city had the power to pass the ordinance; but the power is denied. It is claimed that the constitution of 1870 prohibits the exercise of such power. The first section of article 9 of that instrument provides for an ad valorem tax on all property. It also provides that "the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph, and express interests or business, * * * in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates." In the cases of The People v. Thurber, 13 Ill., 554; Illinois Mutual Fire Ins. Co. v. City of Peoria, 29 id., 180; Ducat v. Chicago, 48 id.,

31 172, and Walker v. City of Springfield, 94 id., 364, it was held that a per cent. on receipts of premiums on insurance policies, required to be paid by insurance agents of foreign companies, was not a tax, but a sum paid for a license to transact the business. In the case of East

St. Louis v. Wehrung, 46 Ill., 392, it was held that a license to sell liquor is not a tax, nor is it governed by the rule of uniformity required in levying taxes, and that the general assembly might delegate the power to municipal corporations, and that when so delegated the power must be exercised by general rule in the city, and it had no power to discriminate between different persons in the amount charged. And the same principle was announced in East St. Louis v. Wehrung, unreported, January term, 1868. It was there said the rule for granting licenses must be uniform in the municipality, and an ordinance to empower the city treasurer to fix the license fee was therefore void. The court also held there was a difference between a tax and a license fee in Chicago Packing Co. v. Chicago, 88 Ill., 221, and that the constitutional provision in reference to taxation has no application to fees exacted for a license, and in this distinction this court is sustained by the decisions of other courts. (See ex parte Robinson, 12 Nev., 263; ex parte Cohn, 13 id., 424; ex parte Siebenhauer, 14 id., 372; Bohler v. Schneider, 49 Ga., 195; Home Ins. Co. v. Augusta, 32 50 id., 530; City of Sacramento v. Crocker, 16 Cal., 120; Henry v. The State, 26 Ark., 521; Straub v. Gordon, 27 id., 625.) This distinction is fully established by authority. The latter words in the first section, requiring the tax to be by general law, and uniform as to the class upon which it operates, have no operation upon this case, because this, as shown by the cases cited, is not a tax, but a license. The constitution has not prohibited the general assembly from imposing or authorizing the imposition of the duty to procure a license to pursue any calling, nor has it limited the power or limited its exercise. In this respect the power of the legislature is the same as it has ever been since the organization of the State government, and no one, we presume, will question the legislative power to require persons engaged in various avocations to procure a license for the purpose, and thus regulate the exercise of an avocation. It is a power exercised by all governments, and is one of the essential means of providing for raising revenue for both the State and local governments, and the regulation of business. If the constitutional convention had intended to make so radical a change as to deprive the legislature of this power, or to make a license fee uniform throughout the State on all persons exercising the same calling, without regard to the capital invested, business done, or profits realized, that body would have employed very different language from that which we find in that instrument. They were aware that this court had held that a license fee was not a tax, in the constitutional sense, 33 and we have a right to suppose they used the term "tax," in a sense to exclude a license. That body could not have intended to deprive municipal bodies of this great source of revenue, and to abandon the power either directly or through municipal bodies, to regulate various callings. If they had intended to prevent all licenses for all purposes they would have said it, or if it was intended to restrain the exercise of the power to regulate them it would have been so provided. It is insisted that the fourth section of the act authorizing Wiggins to establish a ferry (Sess. Laws, 1819, p. 105,) provides that the ferry so established should be subject to the same taxes as should be imposed on other ferries in the State, and "under the same regulations and forfeitures." It is therefore contended that when the legislature, in 1853, created the present corporation, it, by the first section of the charter, provided the corporation might pur-

chase, hold, use, and enjoy the ferry franchise theretofore granted to Samuel Wiggins, and inasmuch as the company is using that franchise, it is entitled to use the same without paying higher taxes than any other ferry in the State. We have seen this license fee is not a tax. In construing all grants by the government, the rule is that it must be strict against the grantee, and the term "tax," cannot be held to be a license fee. The legislature did not agree to exempt the corporation from taxes and other burthens. By general law all other ferries were required to pay a license fee to
34 the county of not less than $2 nor more than $100, as should be fixed by the county commissioners. (Sec. 14 of the chapter entitled "Ferries," Rev. Stat. 1845.) This was afterwards increased by enactment to not less than $5 and not more than $300 *dollars*, and it is stipulated that this company for years paid annually to St. Clair County the latter sum, thus showing that, by its own construction of its charter, the power to require this fee was conceded, and the ferry company should now be held to that construction. It therefore follows that the legislature had the right to act on that construction, and to authorize the city to impose the fee, instead of the county. It may be, that by authorizing the city to exercise the power, it operated to deprive the county of the right; but that in nowise affects this question. The legislature has power to create an artificial person called a corporation, and to endow it with rights and powers resembling those of natural persons, but it has no power to endow such bodies with powers or rights higher or greater than those possessed by natural persons, nor can that body exempt such artificial persons from governmental control, regulations, or obedience to the laws of the State, or the governmental burthens imposed on natural persons. When created they became quasi inhabitants of the State, and entitled to precisely the same protection in their rights as natural persons, and they on every principle of reason and justice must be subjected to the same governmentol control and regulation, and to all the burthens for the support of government, to which natural persons
35 are subjected. They, to the extent of their privileges, become persons and a portion of the governed, and liable to be governed as are the individuals of the community in which they are located and transact their corporate business. A corporation, being the creature of the legislature, has only such rights or franchises as are conferred upon it by its creator, and is capable of exercising none other. A natural person is born with all the rights his intellectual and physical powers are capable of performing. In a state of nature his lack of these capacities are the only limitations on his rights. He, therefore, is endowed by nature with all the rights a corporation possesses, and vastly more. The rights with which nature has endowed him are incontestably as sacred, but no more so than those conferred on a private corporation. Government is formed by depriving all persons of a portion of their natural rights. The rights they enjoy under government are not conferred by it, but are only those of which they have not been deprived. It is only by a deprivation of all persons of a portion of their rights that it is possible to form and maintain government. Without it there could be none but government by each individual, as he might be able to sustain his power. Its organization means a surrender of a portion and the control of his reserved rights, and the power of the government to control all persons in the exercise of these

reserved rights must be conceded. Salus populi suprema lex is a
36 maxim of the law that has peculiar force. In the maintenance of the government and the general welfare, individual rights, whether of natural persons or corporate bodies, must yield to the public good, and the general assembly is invested with the sole power of determining under what restraints all persons, whether natural or artificial, shall pursue their various avocations, unless restricted by constitutional limitation. That is an essential attribute of government. That is the great purpose of creating the legislative department, and all writers on government agree that it is the supreme power in the State. Any man owning or having control of land on opposite banks of a river has the natural right to procure boats and establish and maintain a ferry, and charge tolls for the services rendered persons in crossing them from one side to the other; but the general assembly, in the exercise of its police power, which pervades every department of business, and its regulation and control, as well as the acts of persons, has deprived all persons of that right unless they shall conform to prescribed requirements, and pay the public a prescribed fee for a license to operate the ferry and charge tolls. Now, when an artificial person is empowered to operate a ferry, its right to do so is no greater or more sacred than that of a natural person. They are placed on an equality as to rights and power of control. If the legislature may control or regulate the power of an individual in the exercise of his natural right to establish a
37 ferry, why may it not exercise the same control over the artificial person it has created? Is there a possible reason, founded on justice, why the legislature may not exercise the same power over a creature it has brought into existence that it may over a person who has been endowed with rights by the great Ruler of the universe? The legislature, even if it has the power to do so, did not in terms exempt this corporation by its charter from the same power of control that it may exercise over a natural person, and we will not strain construction and violate the rule that in a grant by the government all doubts must be solved in its favor, and nothing passes except it clearly appears to have been so intended. This rule is as old as the law itself. The charter gave this corporate body the right to establish and maintain a ferry, and that right was no greater than the same right possessed by an individual, and it has never been denied that the legislature might impose a license fee to authorize a natural person to establish and maintain a ferry. The legislature only conferred the same power on the corporate body as that possessed by natural persons, and it undoubtedly has the same right to limit and control its exercise of the right that it may the right of a natural person. It would be unreasonable, unjust, and contrary to the great principle of equality of
38 privileges and burthens, upon which our government is based, to make corporate bodies a privileged class, and exempt them from the common governmental burthens. They, like natural persons, should contribute to the support of the government that affords protection to all of their rights.

Natural persons were born with the right to peddle, auction, follow the business of brokers, hawking, merchants, commission men, showmen, jugglers, inn-keepers, grocery-keepers, liquor dealers, to establish toll bridges, ferries, etc., and most, if not all, of these occupations have been pursued in all ages, in all countries, and in all conditions of men, from the savage

to the most civilized. Yet all civilized governments have controlled them, and required persons, for the public good, to pay for and procure a license to follow these various avocations. The power has been exercised in this State from its very organization almost without question. If this power may be successfully challenged, it would seem to be doubtful what power might not be with equal reason. The legislature may exercise all power not prohibited, and unquestionably all legislative power not limited by the fundamental law. This power was not prohibited, and it was therefore well exercised. It is said that this is a navigable river, and therefore is under the control of Congress. And it is further said Congress
39 has the power to regulate interstate commerce, and has regulated it by requiring every ferry-boat propelled by steam to be inspected according to an act of Congress, and such other regulations as Congress may prescribe shall be complied with before a certificate shall be granted. Nothing, it appears to us, can be plainer than this was intended purely as a police regulation for the safety of persons, and not a measure, in the slightest degree, to regulate commerce. The language cannot be tortured into such a purpose. The very language of the section states it is for the better security of life that the regulations shall be complied with before the certificate of the inspector shall be granted. To hold that the section was intended to regulate commerce would violate every known rule of construction, and this would seem to be obvious to all persons. It is also urged that it violates the rule of uniformity. The ordinance applies to all ferries and ferry-boats in the city alike, and makes no discrimination. And this answers the rule laid down in City of East St. Louis v. Wehrung, supra. There is no force in this position. It is again said it is a tonnage tax and a regulation of commerce. How this can be said to be a tonnage tax on a ferry-boat or a regulation of commerce is to us incomprehensible. That tax applies to a wholly different class of vessels, as is shown by the following decisions: In Gibbons v. Ogden 9,
40 Wheat. 1, Chief-Justice Marshall said: "But the inspection laws are said to be regulations of commerce, and are certainly recognized in the Constitution as being passed in the exercise of a power remaining with the States. That inspection laws may have a remote and considerable influence on commerce will not be denied; but that a power to regulate commerce is the source from which the right to pass them is derived cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of a country to fit them for exportation, or it may be for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass." He again says in the same case: "No direct power over these objects is granted to Congress, and consequently they remain subject to State legislation. If the legislative power of the Union can reach them it must be for national purposes; it must be where power is expressly given for a

special purpose, or is clearly incidental to some power which is expressly given."

41 The case of Conway v. Taylor, 1 Black., 603, recognizes the same doctrine, and the court says:

"Lastly, it is urged that the Commodore having been enrolled under the laws of the United States, and licensed under those laws for the coasting trade, the decree violates the rights which the enrollment and license gave to the appellants in respect of that trade, by obstructing the free navigation of the Ohio. * * * The language of the Constitution, to which this objection refers, is as follows: 'The Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes.' (Art. 1, sec. 8, clause 4.) The character and extent of the power thus conferred, and the boundaries which separate that power from the powers of the State, touching the same subject, came under discussion in this court for the first time in Gibbons v. Ogden, 9 Wheat., 1." The court then quotes what was said by Chief-Justice Marshall, above cited, and then proceeds: "The same principle has been repeatedly affirmed in other cases, both in this and the State courts. In Fanning v. Gregoire, 9 How., 534, before referred to, this court held, the argument that the free navigation of the Mississippi, guaranteed by the ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with the police power of a State in granting ferry licenses. The counsel for the appellees has invoked the authority of Cooley v.

42 Board of Wardeus of Philadelphia, 12 How., 299, in which a majority of this court held that upon certain subjects affecting commerce, as placed under the guardianship of the Constitution of the United States, the States may pass laws which will be operative till Congress shall see fit to annul them. In the view we have taken of this case, we have found it unnecessary to consider that subject. * * * That the authority lies within the scope of that immense mass of undelegated powers which are reserved to the States respectively, we think too clear to admit of doubt." To the same effect are Nathan v. Louisiana, 8 How., 73; Woodward v. Parkham, 8 Wall., 123; Huison v. Lott, id. 148; and Chalmers v. The People, 11 Mich., 43. These authorities most clearly settle this proposition. Nor is the government inspector's certificate a license that abrogates or supersedes the legislative and municipal requirements. That is but a protection against penalties imposed by the government, still leaving the party liable to penalties for a failure to comply with the State and municipal requirements. It is the State laws which confer the power to pursue the business. (Block v. Jacksonville, 36 Ill., 301.)

That case is decisive of that question. In any view we have been able to consider the case we must hold that the legislature had the power to require appellant to procure a license to run its ferry, and having the right, its power is undeniable to delegate its exercise to the municipality, precisely as it did to license, tax, and regulate billiard-tables, ten-pin-

43 alleys, and ball-alleys; to restrain, regulate, and prohibit the sale or giving away intoxicating liquors; to direct, license, and control wagons and other vehicles; and to license the various other avocations as author-

ized by the charter. The whole record considered, the judgment of the court below must be affirmed.

Judgment affirmed.

Mr. Justice MULKEY. I concur in the conclusion, but not in all that is said in the foregoing opinion.

Mr. Justice SCHOLFIELD. I do not concur in this opinion.

Mr. Justice DICKEY, dissenting:

I cannot concur in this decision. The power to impose this burden upon this ferry company is claimed by the city under a clause in its charter granted in 1869, wherein power is conferred upon the city in general terms, "to regulate, tax, and license ferry-boats." I concur in the view that this ordinance is not an exercise of the power to "tax" ferry-boats. The ordinance imposing this burden does not profess to impose a tax. A tax on "ferry-boats" is a tax on property, and as such, under the constitution of 1848 as well as that of 1870, can only be imposed by valuation. Nor does this profess to be a tax upon the business of running or keeping a ferry. The decision in this case does not place the validity of the
44 ordinance upon the power to tax. Obviously the passage of this ordinance was not an exercise of the power to regulate ferry-boats. There is not a word in the ordinance relating to the mode of operating the ferry-boats in question; nothing relating to the material of which they shall consist or the mode of their construction, or relating to the character or skill of those actually running these boats, or relating to the care to be exercised in receiving or discharge of passengers or goods or the manner of landing; or relating to any matter which can properly be classed under the exercise of police powers or the power to regulate. This ordinance is simply an attempt to exercise the power to "license," pure and simple. This power, where there is no attempt to regulate or to tax, can only be exercised in a case where the authority imposing the burden has the rightful power to prohibit the thing done, or, in its discretion, to permit it to be done. This doctrine is taught in The People v. Thurber, 13 Ill., 544; Insurance Co. v. Peoria, 29 id., 180; East St. Louis v. Wehrung, 46 id., 392; Ducat v. Chicago, 48 id., 172; Walker v. Springfield, 94 id., 372. In The People v. Thurber it is said of such a burden, "This is not a tax upon property, but is a burden * * * for the right of exercising a franchise or privilege which the legislature would have the right to withhold or inhibit altogether." This language is quoted with approbation in Walker v. Springfield, decided in 1880. The word "tax," as used in the constitution of Michigan, received the same inter-
45 pretation, and was held not to embrace a license fee. (Chilvers v. The People, 11 Mich., 43.)

It is there declared of a license fee, that "it is not a tax," in the sense of that word in their constitution and statutes, and that "it is a price paid for a franchise * * * vested in the individual." The mere power to license and exact a license fee as a source of revenue, is, and from its very nature should always be, confined to a permission granted to exercise some privilege or franchise, or to do something which may not lawfully be done without permission, or which the power exacting the same might lawfully prohibit altogether. Remember, as was said in People v.

Thurber, supra, a license fee proper, exacted merely for the purposes of revenue, "is a burden" imposed as payment "for the right of exercising a franchise or privilege which the legislature would have the right to withhold or inhibit altogether;" and that, as was said in the Michigan case, "it is a price paid for a franchise." The power to license, strictly and properly speaking, is simply a power to sell a privilege, and hence is confined to the granting of a privilege to do a thing in a case where the privilege might be withheld, or the doing of the thing might lawfully be prohibited entirely. The ordinance assumes the right of the city in this case to prohibit. There is a class of cases where the power is granted to require the taking out of licenses before doing certain things, and in which the right to do the thing in question cannot lawfully be prohibited altogether.

46 This class of license cases falls properly within the exercise of the power to regulate where that power is given. Thus, where a municipal corporation has power to regulate the sale of intoxicating liquors, and to license tippling houses, but has not the power to prohibit altogether, it may be required that a license shall be obtained, in order that only discreet persons may be allowed to make such sales, and that bond and security may be required for good behavior in so doing. Hackdrivers in a city may be required, for the better protection of the public, to take out licenses and wear a number or a badge for identification, and all this under the exercise of police or regulative powers. In this case, as we have already seen, there is no pretense of the exercise of the regulative or police powers; it is simply the exacting of a license fee for the purposes of revenue only. This brings us to the question whether the City of East St. Louis was clothed with power to exact of this ferry company this license fee for the mere purpose of revenue. Had the city power to prohibit altogether in this case? If it has such power, it is derived from the State of Illinois through its charter granted in 1869. Unless the State of Illinois had at that time rightful power to exact such a license fee, it is plain the city can have no such power; the stream cannot rise higher than its source. In 1819, on March 2d, an act of

47 the legislature was passed granting to Samuel Wiggins, his heirs and assigns, authority to establish and maintain the ferry now owned by this ferry company, and to charge certain rates of ferriage.

The second section of the act forbade the establishment of any other ferry within a mile of this ferry. The fourth section declared that "the ferry hereby established shall be subject to the same taxes as are now or hereafter may be imposed upon other ferries within this State, and under the same regulations and penalties; and if the provisions of the second section of this act should be made to appear to the general assembly to be injurious to the public good, that then, and in such case, the said second section may be repealed." A sand-bar having formed in front of the ferry landing, at which Wiggins had established his ferry, under the act of 1819 another act was passed on February 6, 1821, reciting the former grant to Wiggins, and granting to him the right to remove his ferry to another landing, "under the same privileges as prescribed in the act of March 2, 1819." This was done, and the ferry maintained there by Wiggins, his heirs and assigns, until in 1853. In that year (1853) The Wiggins Ferry Company (the appellant in this case) was chartered, and authorized to purchase the ferry franchise granted to Wiggins, his heirs

and assigns, by the acts of 1819 and 1821, and the ferry property thereto pertaining, and to exercise all the powers and enjoy all the privileges which had been so granted to Wiggins and his representatives. In that charter it was declared that "nothing in this act shall be construed to create any private right, so as to interfere * * * with the right of the legislature at any time hereafter to create municipal corporations within the limits specified, and to confer upon such conporations all such police powers * * * as may be usually and properly conferred upon a city corporation under the constitution of Illinois." (Private Laws of 1853, p. 197.) Under this act the purchase was made, and when the charter of East St. Louis was granted this ferry company was the owner of the ferry franchise in question. The burden here imposed does not seem to me to be in any sense the exercise of a police power. The nature and character of that franchise was considered by this court in 1845, in the case of Mills et al. v. County of St. Clair, 2 Gilm. 197. It was there declared that "the grant to Wiggins was essentially a contract between him and the State. By its terms, on his part, he is bound to run the ferry, to afford at all times a safe and speedy passage to travelers and their property across the river, to keep for this purpose a supply of boats and hands, and to propel such boats in the manner prescribed by the act; and, on its part, the State contracts that he may run the ferry. * * * The obligations imposed by the act * * * must, of necessity, be mutual." In an earlier part of that opinion it is said, in relation to this grant, "when a grant has once been made by legislative authority * * * it cannot be taken back * * * until the public interests and welfare shall demand its resumption, and provision shall have been made for just compensation to the owner in the manner required by law." Thus it is seen that at the time when the charter of appellee granted power to "license ferry-boats" this ferry company held, by contract from the State, the right to "run this ferry," a right which could not be taken back by the mere fiat of the legislature, and therefore the legislature had then no power to withhold from this company such right, nor power to inhibit this company from running this ferry, and had not the power by statute to exact of this company a price to be paid for the privilege of running the ferry, a privilege it already held by grant and had paid for. Having no such power the legislature could not grant such a power to the city. The use then of the general term "to license ferry-boats," made in the charter, should be held to grant only the power to exact a license fee for revenue from persons using ferry-boats who are not already clothed with the right to run without such license. Of course a corporation has no higher rights than those of an individual under the same conditions. It has, however, the same rights. Had Samuel Wiggins continued to own this ferry franchise, could he have been lawfully subjected to this demand? I think not. This corporation stands in his shoes, and has the same rights in this regard. This ordinance, in so far as it affects appellant, is merely an attempt to exact a license fee purely for the purposes of revenue, as a price for a privilege which appellant already holds under purchase from Wiggins and others, who held the same by an irrevocable grant from the State, which the State itself could not by mere legislative act take away. It is a demand upon this company that it shall purchase from the city a privilege which it already

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owns by a title beyond the power even of the State to destroy or take away, save upon just compensation under condemnation proceedings.

The ordinance, in so far as concerns this company, is, I think, incompatible with the statutes of the State granting this franchise to this company, and is, therefore, in my judgment, inoperative upon this ferry company.

Whereupon the following final order is entered of record herein, to wit:

51 *Final order affirmed.*

At a supreme court begun and held at Mount Vernon, on Tuesday, the 3d day of May, in the year of our Lord one thousand eight hundred and eighty-one, within and for the southern grand division of the State of Illinois, to wit, on Wednesday, the 29th day of March, A. D. 1882. In vacation.

Present, Alfred M. Craig, chief justice.
" John M. Scott, associate justice.
" Benj. R. Sheldon, associate justice.
" John Scholfield, associate justice.
" John H. Mulkey, associate justice.
" Pinkney H. Walker, associate justice.
" T. Lyle Dickey, associate justice.
James McCartney, att'y general.
Geo. W. Yost, sheriff.

J. O. CHANCE, *Clerk*.

THE WIGGINS FERRY COMPANY, PLAINTIFF in error, *vs.* THE CITY OF EAST ST. LOUIS, DEFENDANT IN error. } 21. Error to appellate court, 4th dist.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective, and that that record is no error; therefore, it is considered by the court that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said defendant in error recover of and from the said plaintiff in error costs by it in this behalf expended, and that it have execution therefor.

(Indorsed:) No. . Supreme court, Illinois term, 188 .
vs. . Final order. J. O. Chance, clerk supreme court.

52 I, J. O. Chance, clerk of the supreme court of the State of Illinois, do hereby certify that the foregoing is a true and complete

transcript of the record of proceedings had in said supreme court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Mount Vernon, this 28th day of July, A. D. 1882.

[SEAL.] J. O. CHANCE,
Clerk of the Supreme Court.

(Indorsed:) Illinois supreme court, southern grand division. May term, 1881. Record. Fee, $21.50.

53 Under the agreement contained in the foregoing record, the plaintiff in error files the following as samples of the enrollments, inspections, and licenses of the steam ferry boats of the plaintiff in error, and requests that they may be considered by the court under said agreement as a part of the record in this case, and be printed with the same.

H. P. BUXTON,
Att'y for Pl'ff in Error.

54 (Copy.)

License No. 328, permanent; official number, numerals; 8256; letters .

THE UNITED STATES OF AMERICA:

License of vessels of twenty tons or upwards to carry on the coasting trade for one year.

DISTRICT OF NEW ORLEANS,
Port of St. Louis, Mo.:

In pursuance of title L, "Regulation of vessels in domestic commerce," of the Revised Statutes of the United States, the Wiggins Ferry Company, owner, by Henry L. Clark, of St. Louis, Mo., sec'ty, and George Hoffman, of same place, master, having given bond that the steamer called the East St. Louis, whereof the said George Hoffman is master, burden 397 tons and 49 hundredths, as appears by her enrollment, issued at this port, numbered 145, and dated June 15th, 1868, shall not be employed in any trade while this license shall continue in force whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other em-
55 ployment than is herein specified, license is hereby granted for the said steamer called the East St. Louis to be employed in carrying on the said trade for one year from the date hereof and no longer.

Given under my hand and seal at the port of St. Louis, in the district of New Orleans, this 2nd day of June, in the year one thousand eight hundred and eighty.

[L. S.] (Signed) HENRY P. WYMAN,
Sp'l Dep. Surveyor of Customs.

CUSTOM-HOUSE, PORT OF ST. LOUIS, *Feb.* 25, '81.

A true copy from the records of this office as contained in license book for year 1880.

NELSON YOUNG,
Deputy Surveyor of Customs.

56 Endorsement on back as follows: (Cat. No. 541.) Copy. License of vessels of 20 tons or upwards. License No. 328 of the steamer East St. Louis, $397\frac{49}{100}$ tons. Issued at the port of St. Louis, district of New Orleans, June 2nd, 1880. Filed Mar. 1, 1881. John Q. Harman, app. cl'k.

57 (Copy.—Form 2114.)

By Authority of the United States of America.

Certificate of inspection for steam ferry-boats.

Steam ferry-boat East St. Louis.

This certificate expires June 2nd, 1881.

STATE OF MISSOURI,
District of Saint Louis, ss:

Application having been made in writing to the undersigned inspectors for this district to inspect the steam ferry-boat East St. Louis, of St. Louis, in the State of Missouri, whereof The Wiggins Ferry Company is owner and George Hoffman is master, having performed that duty, on the 2nd day of June, 1880, do certify that the said vessel was built at Louisville, in the State of Kentucky, in the year 1868; that the hull is constructed of wood, as shown by official records, and is of $397\frac{49}{100}$ tons burden; that the said vessel has on board the life-saving appliances required by law, also is required to carry a full complement of officers and crew, consisting of one master, 1 pilot, 1 engineer, sufficient crew. That the said vessel is provided with one high-pressure engine of 30 inches diameter of cylinder and 6 feet stroke of piston, and 3 boilers, 20 feet in length and $3\frac{10}{12}$ feet in diameter, made of lawful iron, in the year 1868, and are allowed a steam pressure of 108 pounds to the square inch, and no more.

58 The said vessel is permitted to navigate, for one year, as a ferry-boat, the Mississippi River, between St. Louis, Mo., and East St. Louis, Ill's.

The following particulars of inspection are enumerated, viz:
Signal lights—Yes.
Steam whistle—location on pilot-house.
Fire-pumps—No., 2.
Hand fire-pumps—No., 1.
Fire-extinguishers—No., .
Fire-buckets—No., 12.
Barrels—No., 3.
Tanks—No., .
Cork life-preservers—No., 10.
Hose—Feet 100.
Fusible plugs inserted—No., 6.
Longitudinal seams single-riveted, holes punched.
Stoves secured to deck—Yes.
Axes—No., 3.
Boats—No., .
Oars and life-lines—No., .

Floats—No., 25.
Steam-gauges—No., 1.
Safety-valves—No., 2.
Safety-valves, aggregate area 25 sq'r inches.
Gauge-cocks—No., 8.
Low-water gauges—No., 3.
Feed-pumps—No., 2.
Hydrostatic pressure applied, 165 pounds.
Copies steamboat law on board—No., Yes.
Copies pilot rules on board—No., Yes.

59 PETER VANDERWORT,
Inspector of Hulls.
JOHN SCHAFFER,
Inspector of Boilers.

STATE OF MISSOURI,
Port of St. Louis, ss:

Sworn to before me this 3rd day of June, 1880.
Custom-house, St. Louis, February 25th, 1881.
HENRY P. WYMAN,
Sp'l Dep. Sur. of Customs.

I hereby certify that the above certificate is a true copy of the original on file at this office.
[L. S.] GUSTAVUS ST. GEM,
Surveyor of Customs.
JAS. A. DUMONT,
Supervising Inspector-General, President of the Board.

Approved February 13, 1880.
JOHN SHERMAN,
Secretary of the Treasury.

60 (Endorsement on back as follows:) Steam ferry-boat East St. Louis. Inspection and license.

This is submitted as sample of all under agreement in record.
H. P. BUXTON,
Att'y W. F. Co.

Filed Mar. 1, 1881. John Q. Harman, app. cl'k.

61 Copy.

Enrollment No. 145.—*Permanent.*

Official number; numeral, 8256; letters, .

Enrollment in conformity to an act of the Congress of the United States of America entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Henry L. Clark, of St. Louis, Mo., having taken or subscribed the

oath required by the said acts, and having sworn that he is secretary of The Wiggins Ferry Company; that it is incorporated by the State of Illinois, and that the stockholders are citizens of the United States, sole owners of the ship or vessel called the East St. Louis, of St. Louis, whereof Wm. Y. Christy is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at Louisville, Ky., in the year 1868, as appears by her temporary certificate of enrollment # 83, issued from the port of Louisville, Ky., June 3rd, 1868, now surrendered for permanent paper; and said temporary enrollment having certified that the ship or vessel has one deck and no mast, and that
62 her length is $178\frac{}{10}$ feet; her breadth, $51\frac{}{10}$ feet; her depth, $6\frac{4}{10}$ feet; her height, $\frac{}{10}$ feet; that she measures 397 and $\frac{49}{100}$ tons, viz:

	Tons.	100ths.
Capacity under tonnage deck	397	49
Capacity between decks above tonnage deck		
Capacity of inclosures on the upper deck, viz		
Total tonnage	397	49

And that she is a steam ferry, has a recessed stern and a plain head. And the said Henry L. Clark having agreed to the description and admeasurements above specified, and sufficient security having been given according to the said acts, the said steamer has been duly enrolled at the port of St. Louis, Missouri.

Given under my hand and seal at the port of St. Louis, this
[L. S.] fifteenth day of June, in the year one thousand eight hundred and sixty-eight.

(Signed) S. M. BRECKINRIDGE, [L. S.]
Surveyor and Acting Collector.

CUSTOM-HOUSE, PORT OF ST. LOUIS,
Feb. 25, 1881.

A true copy from the records of this office as contained in enrollment book for 1868.

NELSON YOUNG, [L. S.]
Dep. Surveyor of Customs.

63 (Endorsement on back as follows:) Copy. Enrollment #45. St'r East St. Louis. St. Louis, June 15th, '68. Filed Mar. 1, 1881. John Q. Harman, app. cl'k.

(Indorsement on cover:) No. 949. The Wiggins Ferry Company, plaintiff in error, vs. The City of East St. Louis. Illinois supreme court. Filed 2nd October, 1882.

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